IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 13861 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAMESH BAJILAL GUPTA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 13861 of 2003

MR HR PRAJAPATI for Petitioner No. 1

MR MR PRAJAPATI for Petitioner No. 1

MR AD OZA GP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 05/11/2003

ORAL JUDGEMENT

By way of filing this Special Civil Application, the petitioner has challenged the order of detention passed by the Police Commissioner, Surat, on 3rd June, 2003 in exercise of powers under sub-section (2) of Section 3 of the Gujarat Prevention of Anti Social

Activities Act, 1985 (hereinafter referred to as "PASA Act") directing the detention of the petitioner as a "bootlegger" and in pursuance of the said order the petitioner came to be detained in custody on 3rd June, 2003.

2. The grounds served upon the petitioner and as placed on record clearly indicate that the detaining authority took into consideration the fact of registration of crime against the petitioner on 13th May, 2003 under Sections 66(1)(b), 65(e),(a), 81 and 116(b) of the Bombay Prohibition Act, whereby it is alleged that foreign liquor bottles 1,440 in number worth of Rs.43,200 were seized by the police. The detaining authority further relied upon two in-camera statements as recorded by the by sponsoring authority on 14.5.2003 and 14.5.2003, as verified by the detaining authority on 30.5.2003, revealing incidents occurred on 16th March, 2003 and 27th April, 2003. From the above material, the order, impugned in this petition, came to be passed by the detaining authority.

3. Learned Advocate Mr. M.R. Prajapati for the petitioner and learned G.P. Mr Oza for the respondents were heard at length.

4. Out of various contentions raised on behalf of the petitioner, and controverted by the GP, it appears that the matter can be disposed of on the ground whether there was enough material before the detaining authority to comprehend that the petitioner has acted in any manner prejudicial to the maintenance of public order. In this respect, as aforesaid, the detaining authority has relied upon two aspects. Firstly, registration of crime under the Bombay Prohibition Act against the petitioner. Now, mere fact of registration of crime against the petitioner under the Bombay Prohibition Act especially when the case was pending when the order came to be passed would not lead to subjective satisfaction that the petitioner has acted in a manner prejudicial to the maintenance of public order. Secondly, the detaining authority relied upon two statements revealing incidents of 16th March, 2003 and 27th April, 2003. The incident occurred on 16th March, 2003 discloses that while the witness was passing on a road he was stopped by the petitioner and his associates and the petitioner conveyed to the witness that the witness was informing the police about the bootlegging activity of the petitioner. When the petitioner denied the petitioner and his associates were instigated and started beating the witness. Though the crowd was gathered, but due to the threat of the

petitioner the crowd was disbursed, shops and larigallas were closed and they escaped from the area. In the other incident which occurred on 27th April, 2003 it is alleged by the witness that the witness was waiting for the passengers for his vehicle. The petitioner and his associates approached him and the witness was directed that he was to carry foreign liquor from GIDC to Pandesara as per the instructions of the petitioner. On refusal by the witness, he was beaten. A crowd was gathered there but non dared to rescue the witness and by supplication the witness could escape. The principle of law as settled is clear that it is the length, magnitude and the intensity of the questionable activities which is required to be judged from the facts of each case where such activities were capable of disturbing the maintenance of public order. It is the degree and extent of the reach of objectionable activity upon the society which is vital for considering the question whether a man has committed breach of only law and order or acted in a manner likely to cause the disturbance to public order. Keeping in mind this and the facts of this case are judged and scrutinised, it transpires that the incidents where each of the witnesses narrated are the incidents more directed against an individual than affecting the larger section of society or even tempo of life. It is difficult to comprehend from the above fact that the activities of the petitioner, which is revealed through in-camera statement were in any manner prejudicial to the maintenance of the public order. At the most, it could be said that this may be the problem of law and order. Therefore, in this view of the matter, the order in question is required to be quashed on this ground alone.

5. In the result, this Special Civil Application is allowed with no order as to costs. The order impugned in this Special Civil Application passed by the Police Commissioner, Surat City, on 03.06.2003 under Section 3(1) of the PASA Act against the petitioner is quashed and set aside. The petitioner is directed to be set at liberty forthwith if he is not required to be detained in jail for any other purpose. Rule made absolute. DS permitted.

(J.R. Vora, J.)

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